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In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES RAILROAD RETIREMENT BOARD,
APPELLANT

v.

GERHARD H. FRITZ

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

BRIEF FOR THE APPELLANT

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Question presented	2
Statement	2
Summary of argument	20
Argument	25
45 U.S.C. 231b(h) satisfies the Due Process Clause because Congress had a rational basis for excluding from eligibility for "windfall" railroad retirement benefits those individuals who left the railroad industry prior to 1974, before they were permanently insured under the Social Security Act	25
A. Section 3(h) of the Railroad Retirement Act of 1974 steers a middle course between the concededly constitutional options of providing broad grandfather protection and providing no grandfather protection at all	25
B. Section 3(h) of the 1974 Act is rationally related to the Act's legislative purposes	27
1. Recognizing the relative equities of beneficiaries	29

Argument—Continued Page

2. Providing benefits to career railroad employees 33

3. Preserving the fiscal integrity of the railroad retirement system 39

C. The additional reasons offered by the district court do not support its finding that the classification in Section 3(h) of the 1974 Act is irrational 42

1. The supposed congressional purpose to "protect completely" the "vested" expectations of all employees 43

2. The work of the Joint Labor-Management Railroad Retirement Negotiating Committee 45

3. The alternative means available to Congress to resolve the financial problems of the railroad retirement system 50

Conclusion 53

CITATIONS

Cases:

Barrett v. *United States*, 423 U.S. 212 44
Califano v. *Aznavorian*, 439 U.S. 170 28
Califano v. *Boles*, 443 U.S. 282 42
Califano v. *Goldfarb*, 430 U.S. 199 28
Califano v. *Jobst*, 434 U.S. 47 ..... 28, 31, 39
Califano v. *Torres*, 435 U.S. 1 40
Califano v. *Westcott*, 443 U.S. 76 .....51, 52, 53
Califano v. *Yamasaki*, 442 U.S. 682 20

Cases—Continued Page

Chemical Workers v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 46
Dandridge v. *Williams*, 397 U.S. 471 29
Delaware Tribal Business Committee v. *Weeks*, 430 U.S. 73 ..... 45, 49
Flemming v. *Nestor*, 363 U.S. 603 ..... 26, 28
Fletcher v. *Peck*, 10 U.S. (6 Cranch) 87.. 47
Ford Motor Co. v. *Huffman*, 345 U.S. 330 46
Geduldig v. *Aiello*, 417 U.S. 484 42
Hisquierdo v. *Hisquierdo*, 439 U.S. 572 ....*passim*
Humphrey v. *Moore*, 375 U.S. 335 46
Maher v. *Roe*, 432 U.S. 464 ..... 40, 51
Mathews v. *Diaz*, 426 U.S. 67 .....20, 27, 38
McDonald v. *Board of Election*, 394 U.S. 802 29
McLucas v. *DeChamplain*, 421 U.S. 21 20
New Orleans v. *Dukes*, 427 U.S. 297 ..... 21, 27
North Dakota Pharmacy Board v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 29
Railroad Retirement Board v. *Alton R.R.*, 295 U.S. 330 ..... 32, 37
Richardson v. *Belcher*, 404 U.S. 78 28
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 27
Schilb v. *Kuebel*, 404 U.S. 357 29
Vance v. *Bradley*, 440 U.S. 93 .....27, 28, 29, 38, 45, 49
Weinberger v. *Salfi*, 422 U.S. 749 ..... 20, 28
Welsh v. *United States*, 398 U.S. 333 51

Constitution and statutes:

United States Constitution, Fifth Amendment, Due Process Clause 2, 16, 27

Constitution and statutes—Continued Page

Railroad Retirement Act of 1974, 45 U.S.C. 231 *et seq.* 2
45 U.S.C. 231 note 13, 18, 21, 40, 42, 44, 52
45 U.S.C. 231(*o*) 4, 14, 35
45 U.S.C. 231a(a)(1) 5, 34
45 U.S.C. 231a(a)(1)(iv) 23, 36
45 U.S.C. 231a(b)(1) 4, 23, 34, 36, 46
45 U.S.C. 231a(c)(1) 46
45 U.S.C. 231a(d)(1) 23, 36
45 U.S.C. 231b(a) 12
45 U.S.C. 231b(b) 11
45 U.S.C. 231b(h) ..... *passim*
45 U.S.C. 231b(h)(1)-(4) 2
45 U.S.C. 231b(h)(1) 14, 15, 17, 18, 23, 39, 51
45 U.S.C. 231b(h)(1)(i) 38
45 U.S.C. 231b(h)(1)(A)(iii) 52
45 U.S.C. 231b(h)(2) 15, 17, 18, 31, 39
45 U.S.C. 231b(h)(3) 17
45 U.S.C. 231b(h)(3)(A)(iii) 52
45 U.S.C. 231b(h)(4) 17
45 U.S.C. 231b(h)(5) 15
45 U.S.C. 231b(m) 12, 14
45 U.S.C. 231c(e) 18
45 U.S.C. 231c(g) 46
45 U.S.C. 231e(d) 33
45 U.S.C. 231f(c)(2) 5, 6
45 U.S.C. 231n(a) 4
45 U.S.C. 231n(d) 13
45 U.S.C. 231q(1) 3
45 U.S.C. 231q(2) 3, 35

Constitution and statutes—Continued	Page
Social Security Act, 42 U.S.C. 401 *et seq.*:	3
42 U.S.C. 410(a)(9)	3
Ch. 709, Sections 203, 205, 213, 60 Stat. 726-735	36
Ch. 632, Section 2, 65 Stat. 683	35
Ch. 632, Section 22(a), 65 Stat. 687	35
Ch. 632, Section 22(b), 65 Stat. 687	5
Pub. L. No. 89-699, 80 Stat. 1073:	
Section 1, 80 Stat. 1073	36
Section 301(e), 80 Stat. 1078	4
Pub. L. No. 91-377, Section 7, 84 Stat. 792-794	8
Pub. L. No. 92-460, Section 6, 86 Stat. 767	10
Pub. L. No. 93-69, 87 Stat. 162:	
Section 101, 87 Stat. 162	47
Section 102(a) and (d), 87 Stat. 162	4
Section 107, 87 Stat. 165	11
Section 107(c)(1), 87 Stat. 165	45-46
Pub. L. No. 93-445, Section 204(a)(3), 88 Stat. 1353	34
Pub. L. No. 94-381, Sections 2 and 7, 90 Stat. 1119-1120	20
Pub. L. No. 95-480, 92 Stat. 1588	41
Pub. L. No. 96-123, Section 101(g), 93 Stat. 925	41
26 U.S.C. 3101	4
26 U.S.C. 3111	4
26 U.S.C. (1970 ed.) 3201	4

Constitution and statutes—Continued Page

26 U.S.C. 3201 4
26 U.S.C. (1970 ed.) 3221(a) 4
26 U.S.C. 3221(a) 4
26 U.S.C. 3221(b) 4
26 U.S.C. 3221(c) 4
28 U.S.C. 1252 20
28 U.S.C. (1970 ed.) 2282 20

Miscellaneous:

Commission on Railroad Retirement, *The Railroad Retirement System: Its Coming Crisis*, H.R. Doc. No. 92-350, 92d Cong., 2d Sess. (1972) ..... *passim*
120 Cong. Rec. (1974):

pp. 18391-18392 30
p. 18392 47
pp. 18392-18393 46-47
p. 18393 46
pp. 35609-35610 40
p. 35616 40
p. 35898 40

123 Cong. Rec. 2230-2231 (1977) 49
125 Cong. Rec. H7123 (daily ed. Aug. 2, 1979) 41
45 Fed. Reg. 13242 (1980) 4
H.R. 2720, 95th Cong., 1st Sess. (1977).. 49
H.R. 6015, 95th Cong., 1st Sess. (1977).. 49
H.R. 12256, 95th Cong., 2d Sess. (1978).. 49
H.R. 1690, 96th Cong., 1st Sess. (1979).. 49-50
H.R. Rep. No. 1711, 74th Cong., 1st Sess. (1935) 3, 38
H.R. Rep. No. 976, 82d Cong., 1st Sess. (1951) 35

Miscellaneous—Continued Page

H.R. Rep. No. 93-1345, 93d Cong., 2d Sess. (1974) ..... *passim*
Railroad Retirement Act Amendments, 1976: Hearing on S. 3662 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 94th Cong., 2d Sess. (1976) 31, 50
Railroad Retirement Act—Supplemental Benefits: Hearing on H.R. 17285 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, 89th Cong., 2d Sess. (1966) 34, 37
Railroad Retirement Board, *Fourteenth Actuarial Valuation of the Assets and Liabilities Under the Railroad Retirement Acts as of December 31, 1977* (Dec. 1979) 13
Railroad Retirement: Hearings on H.R. 1362 Before the House Comm. on Interstate and Foreign Commerce, 79th Cong., 1st Sess. (1945) 36
Restructuring of the Railroad Retirement System: Hearings on H.R. 15301 Before the House Comm. on Interstate and Foreign Commerce, 93d Cong., 2d Sess. (1974) 30, 48
Restructuring of the Railroad Retirement System, 1974: Hearings on S. 3612 Before the Subcomm. on Railroad Retirement of the Senate Comm. on Labor and Public Welfare, 93d Cong., 2d Sess. (1974) 30, 48

Miscellaneous—Continued

Page

S. 467, 95th Cong., 1st Sess. (1977) 49
S. Rep. No. 890, 82d Cong., 1st Sess. (1951) 35
S. Rep. No. 93-1163, 93d Cong., 2d Sess. (1974) ..... *passim*

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OPINION BELOW

The findings of fact and conclusions of law of the district court (J.S. App. 1a-32a) are not reported.

JURISDICTION

The judgment of the district court (J.S. App. 33a-35a) was entered on July 27, 1979. A notice of appeal was filed on August 22, 1979, and the jurisdictional statement was filed on December 5, 1979.

The Court noted probable jurisdiction on February 19, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. *Weinberger* v. *Salfi*, 422 U.S. 749, 763 n.8 (1975); *McLucas* v. *DeChamplain*, 421 U.S. 21, 31-32 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. Sections 3(h)(1)-(4) of the Railroad Retirement Act of 1974, 45 U.S.C. 231b(h)(1)-(4), are reprinted at J.S. App. 38a-43a.

QUESTION PRESENTED

Whether Section 3(h) of the Railroad Retirement Act of 1974, 45 U.S.C. 231b(h), violates the Due Process Clause of the Fifth Amendment because it distinguishes between classes of annuitants, with respect to the amount of benefits they receive, based on their affiliation with the railroad industry on the effective date of the Act or when they retired.

STATEMENT

1. The Railroad Retirement Act of 1974, 45 U.S.C. 231 *et seq.*, "provides a system of retirement and disability benefits for persons who pursue careers in

the railroad industry." *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 573 (1979). The Act is designed to "encourage older workers to retire by providing them with the means 'to enjoy the closing days of their lives with peace of mind and physical comfort,' and so [to] 'assure more rapid advancement in the service' and also more jobs for younger workers." *Id.* at 573-574, quoting H.R. Rep. No. 1711, 74th Cong., 1st Sess. 10 (1935).

Railroad employment is not covered by the Social Security Act, 42 U.S.C. 401 *et seq.* (see 42 U.S.C. 410(a)(9); 45 U.S.C. 231q(1)),[1] but the railroad retirement system is nevertheless interwoven with the social security system in many respects. See generally Commission on Railroad Retirement, *The Railroad Retirement System: Its Coming Crisis*, H.R. Doc. No. 92-350, 92d Cong., 2d Sess. 3-21, 51-75, 167-180 (1972) (hereinafter *Report of the Commission on Railroad Retirement*). Indeed, 45 U.S.C. 231b (h), the provision challenged by appellee in this case, was enacted to limit what Congress perceived to be a windfall accruing to some former railroad employees as a result of an overlap in railroad retirement and social security benefits. Some explication of the interrelationship between the two programs is therefore necessary to an understanding of the issue presented.

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[1] However, if a railroad employee does not attain the 10 years of railroad service necessary to be eligible for railroad retirement benefits, his railroad service is credited as employment under the Social Security Act. 45 U.S.C. 231q(2).

a. Benefits under the Railroad Retirement Act are paid out of the Railroad Retirement Account established in the Treasury by 45 U.S.C. 231n(a) and financed by employment taxes imposed on railroads and their employees. See *Report of the Commission on Railroad Retirement* 7-8, 17-18. Railroads and their employees each pay a basic tax that is fixed by statute at the same rate (now 6.13% of wages) as that established for social security payroll taxes. See 26 U.S.C. 3101, 3111, 3201 and 3221(b). On top of this basic payroll tax, the railroads alone pay an additional tax in the amount of 9.5% of taxable wages. 26 U.S.C. 3221(a).[2]

In 1951, Congress instituted a system of financial interchange between the railroad retirement and social security programs, under which the Railroad Retirement Account was, in effect, reinsured by the

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[2] Prior to 1973, the payroll tax had been divided equally between railroads and their employees. 26 U.S.C. (1970 ed.) 3201, 3221(a). In that year, the social security level payroll tax imposed on both employees and employers and the additional 9.5% tax imposed on employers alone were substituted for the equal payroll taxes. Sections 102(a) and (d) of Pub. L. No. 93-69, 87 Stat. 162.

Since 1966, railroads alone have also paid an additional tax, fixed by the Railroad Retirement Board on a quarterly basis, to finance a special supplemental annuity under 45 U.S.C. 231a(b)(1) for retired railroad employees who had 25 or more years of railroad service and had reached age 65 (or had 30 years of service and reached age 60) and had a current connection with the railroad industry (see 45 U.S.C. 231(o)) when they retired. 26 U.S.C. 3221(c), as added by Pub. L. No. 89-699, Section 301(e), 80 Stat. 1078. This supplemental tax was fixed by the Board at the rate of 12.5 cents for each man-hour of employment for the second quarter of 1980. 45 Fed. Reg. 13242 (1980).

Social Security Trust Fund. Ch. 632, Section 22(b), 65 Stat. 687. See *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 575. Under this arrangement, which is still in effect (see 45 U.S.C. 231f(c)(2)), funds are transferred each year from the Railroad Retirement Account to the Social Security Trust Fund in an amount equal to the social security taxes that would have been paid by the railroads and their employees if railroad service were covered by the Social Security Act. In return, funds are transferred from the Social Security Trust Fund to the Railroad Retirement Account each year in an amount equal to the benefits that would have been paid under the Social Security Act to retired railroad employees, their dependents, and survivors if the employees' railroad service were covered by the Social Security Act. See generally S. Rep. No. 93-1163, 93d Cong., 2d Sess. 2-3 (1974); H.R. Rep. No. 93-1345, 93d Cong., 2d Sess. 2-3 (1974); *Report of the Commission on Railroad Retirement* 7-9, 19-20, 62-63. As explained below, however, these reinsurance payments from the Social Security Trust Fund are reduced in certain instances.

Prior to 1975, a retired individual who had the requisite 10 years of railroad service to be eligible for railroad retirement benefits (see 45 U.S.C. 231a(a)(1)) and who also had been employed outside the railroad industry for a sufficient period to qualify for benefits under the Social Security Act could receive the full social security benefits to which he was en-

titled in addition to his full railroad retirement benefits. However, in order to prevent multiple payments from the Social Security Trust Fund on behalf of an individual receiving such dual benefits, the annual payment from the Trust Fund to the Railroad Retirement Account was reduced by the total of the social security benefits that the individual received directly from the Trust Fund for his nonrailroad work.[3]

Because the Social Security Act grants proportionately greater benefits than does the Railroad Retirement Act to persons with relatively short periods of service and low wages,[4] the reduction in the reinsurance payment from the Social Security Trust Fund to the Railroad Retirement Account on behalf of an individual receiving benefits under both programs was disproportionately large. The excess cost of dual benefits was, accordingly, borne entirely by the Railroad Retirement Account. See H.R. Rep. No. 93-1345, *supra*, at 2-3; S. Rep. No. 93-1163, *supra*, at 2-3;[5] *Report of the Commission on Rail-*

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[3] This reduction in the payment from the Trust Fund to the Railroad Retirement Account continues to be made under the present 45 U.S.C. 231f(c)(2).

[4] This difference results from the fact that social security benefits are established at a level thought to be adequate for the living expenses of lower-paid workers, while railroad retirement benefits are more directly tied to past service and earnings. See *Hisquierdo* v. *Hisquierdo, supra*, 439 U.S. at 574-575; *Report of the Commission on Railroad Retirement* 6-7, 51, 179, 349.

[5] The House and Senate Reports on the Railroad Retirement Act of 1974 presented the following chart to illustrate the impact of dual benefits on the Railroad Retirement Account

road Retirement 8-9, 24, 73, 344, 355-356. And because retirees eligible for benefits under both pro-

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(H.R. Rep. No. 93-1345, *supra*, at 3; S. Rep. No. 93-1163, *supra*, at 3):

FINANCING DUAL BENEFITS

Railroad Employee With 35 Years of Service— No Social Security Employment	Railroad Employee With 35 years of Service During 10 Years of Which He Also Had Social Security Employment
Income to Social Security	
35 years of SS taxes	45 years of SS employer taxes 35 years of SS employee taxes
Income to Railroad Retirement	
35 years of RR taxes (excess over SS)	35 years of RR taxes (excess over SS) 10 years of SS employee taxes
Benefits to Employee	
(a) Total RR benefit $600	(a) Total RR benefit [1] $550 (b) SS benefit 250 (c) Combined benefit $800
Financing of Benefits	
(a) Through Financial Interchange: Entire SS component $320	(a-1) Through Financial Interchange: $320 less $250 $ 70 (a-2) Direct by SS $250
(b) By Railroad Retirement fund: RR component $280	(b) By Railroad Retirement fund: $480
Cost of Dual Benefit to Railroad Retirement Fund	[2] $200

[1] Certain offsets are made against RR retirement benefits where the individual is entitled to Social Security benefits.

[2] $250 reduction in financial interchange less $50 reduction described in footnote 1.

grams received their full railroad retirement benefits despite the disproportionate reduction in the reinsurance payment on their behalf from the Social Security Trust Fund, recipients of dual benefits caused a substantial and accelerating drain on the Railroad Retirement Account.[6] This drain was one of several factors, including reduced railroad employment and rising benefits, that placed the financial soundness of the railroad retirement system in jeopardy by the late 1960's and early 1970's. See S. Rep. No. 93-1163, *supra*, at 2-3; H.R. Rep. No. 93-1345, *supra*, at 2-3; *Report of the Commission on Railroad Retirement* 8-9, 73, 129-139, 344, 362, 365. Indeed, the committee reports on the Railroad Retirement Act of 1974 predicted that if the previous system had been permitted to continue, "the Railroad Retirement system will be bankrupt by 1981, and there will be insufficient funds available to pay benefits at the present level to anyone—past, present, or future beneficiaries." S. Rep. No. 93-1163, *supra*, at 7; H.R. Rep. No. 93-1345, *supra*, at 7.

b. Against this background, Congress in 1970 created the Commission on Railroad Retirement to study the actuarial soundness of the railroad retirement system. Pub. L. No. 91-377, Section 7, 84 Stat. 792-794. See *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S.

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[6] The prospective net drain on the Railroad Retirement Account was estimated at $480 million per year from 1970 to the year 2000 if the then-existing system of dual benefits had remained in effect. *Report of the Commission on Railroad Retirement* 9, 73.

at 574 n.3. The Commission's final report, submitted to Congress on June 30, 1972, recommended that the basic railroad retirement annuity be divided into two components, one to correspond to the level of social security benefits nonrailroad workers receive (the "social security component") and the other representing an additional reward for railroad service (the "staff component"). *Report of the Commission on Railroad Retirement* 22-23, 502-503.

The Commission recommended in addition that the "windfall" accruing to persons receiving both railroad retirement and social security benefits be eliminated in the future, in part because of the financial drain dual benefits created on the Railroad Retirement Account. The Commission also found it unfair that employees who split their careers between railroad and nonrailroad work could receive greater retirement benefits for comparable service and contributions than employees who spent their entire careers in the railroad industry, particularly because the payroll taxes of career railroad employees bore much of the burden of the excess cost of dual benefits. *Report of the Commission on Railroad Retirement* 344-345, 349-357, 366-367. However, the Commission did recommend the inclusion of special transitional or "grandfather" provisions to protect, in varying degree, the expectations of retired employees who were already receiving benefits under both the social security and railroad retirement programs and certain other present and former rail-

road employees who anticipated receiving such dual benefits in the future. *Id.* at 367-369.[7]

Following receipt of the Commission's proposals, Congress requested representatives of railroad employees, retirees, and carriers to submit a report containing their recommendations to ensure the solvency of the railroad retirement system, based upon their negotiations and taking into account the specific recommendations of the Commission. Pub. L. No. 92-460, Section 6, 86 Stat. 767. That report was submitted to Congress on February 27, 1973. It called attention to the complexities of the problem and indicated that substantial progress had been made in arriving at mutually agreeable solutions. See H.R. Rep. No. 93-1345, *supra*, at 28; S. Rep. No. 93-1163, *supra*, at 27. Congress then requested

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[7] The Commission recommended that individuals or families already on the beneficiary roles continue to receive dual benefits and that their actual social security benefits and the portion of their railroad retirement annuity that corresponded to social security payments should be increased with the cost of living or otherwise as Congress provided for social security benefits. However, the Commission recommended that the additional "staff component" attributable only to railroad service should not be increased with the cost of living as long as the total of guaranteed grandfather benefits exceeded the benefits that would be paid under the Commission's proposed restructuring of the railroad retirement system. The Commission recommended that persons who were fully insured under both programs but were not yet retired also be protected, but that their "staff component" likewise be frozen as of the statutory changeover date. *Report of the Commission on Railroad Retirement* 368-369. Thus, the gap between those who were receiving dual benefits and those who were not would have narrowed over time under the Commission's proposal.

representatives of management and labor to develop and submit recommendations in the form of a draft bill. Pub. L. No. 93-69, Section 107, 87 Stat. 165. The bill eventually introduced and enacted as the Railroad Retirement Act of 1974 was based on the recommendations of the Joint Labor-Management Railroad Retirement Negotiating Committee established under Pub. L. No. 93-69. H.R. Rep. No. 93-1345, *supra*, at 28; S. Rep. No. 93-1163, *supra*, at 27.[8]

c. The Railroad Retirement Act of 1974 followed the suggestion of the Commission on Railroad Retirement that the retirement annuity be divided into two basic components, one corresponding to social security benefits and the other a supplemental benefit attributable to railroad service. In this respect, as the Court noted in *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 574, the Act resembles both a private pension program and a social welfare plan. The upper, and smaller, tier of an annuity under the Act (the "staff component") is tied to the employee's earnings and career service in the railroad industry alone. 45 U.S.C. 231b(b). The lower, and larger, tier corresponds to the total benefits that the employee would receive if all of his railroad service had

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[8] The process by which the bill was introduced following industry negotiations was not novel. The Railroad Retirement Act of 1937 was also the product of extensive negotiations between management and labor, following presidential intervention. See *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 574 n.3. *Report of the Commission on Railroad Retirement* 58.

been covered by the Social Security Act. 45 U.S.C. 231b(a).

The "social security component" is computed on the basis of the employee's combined railroad and nonrailroad service using the benefit computation provisions found in the Social Security Act. 45 U.S.C. 231b(a). However, if the employee is also eligible to receive benefits under Title II of the Social Security Act because he was employed outside the railroad industry for a sufficient period of time (generally 40 quarters) to be permanently insured under that Act, the "social security component" of his railroad retirement annuity is reduced by the amount he is paid directly from the Social Security Trust Fund for his nonrailroad service. 45 U.S.C. 231b (m). It is this offset provision in 45 U.S.C. 231b (m) that effectively eliminates the receipt of dual benefits under the two programs in the future. In this respect, Congress followed the recommendation of the Commission on Railroad Retirement.

Congress also followed the Commission's recommendation by including transitional protection in the 1974 Act for retired employees who were already receiving dual benefits and, in certain situations, for other present and former employees who had an expectation of receiving such benefits at the time the new legislation was adopted. As explained below, however, the grandfather clause proposed by the Joint Labor-Management Railroad Retirement Negotiating Committee and enacted by Congress is narrower than that first recommended by the Commis-

sion on Railroad Retirement, which proposed that entitlement to dual benefits be preserved for *all* individuals who had 10 years of railroad service and were permanently insured under the Social Security Act as of the effective date of the Commission's proposed amendments.[9]

The grandfather protection in the 1974 Act first provides, in Section 204(a)(3) (45 U.S.C. 231 note), that individuals already retired and receiving dual benefits before January 1, 1975, may continue to receive them. Grandfather protection for individuals not yet retired as of that date is embodied in the form of a third component of benefits, commonly called the "windfall component" because of its favorable ratio of benefits received to social security payroll taxes paid. This "windfall component" is available in some situations in which the "social security component" of an individual's railroad annuity has

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[9] Congress determined that the future payment of these limited dual or "windfall" benefits given grandfather protection should be funded by general revenues, rather than payroll taxes imposed on railroads and their employees, and it authorized the appropriation of the funds necessary to cover these benefits. 45 U.S.C. 231n(d). The cost to the Treasury was estimated to be $285 million per year through the year 2000 (H.R. Rep. No. 93-1345, *supra*, at 5; S. Rep. No. 93-1163, *supra*, at 5), or about $7 billion in all. See *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 575. The Railroad Retirement Board now estimates that the cost of the "windfall" benefits under the 1974 Act will be at least $499 million annually through the year 2000, or $529 million annually if inflation continues indefinitely at a rate ranging between 5.75% and 7.9%. Railroad Retirement Board, *Fourteenth Actuarial Valuation of the Assets and Liabilities Under the Railroad Retirement Acts as of December 31, 1977*, at x, 9, 39 (Dec. 1979).

been reduced pursuant to 45 U.S.C. 231b(m) by the amount of the actual social security benefits the individual receives for his nonrailroad service. In order to qualify for any "windfall component," the retired employee must have completed the 10 years of railroad service necessary to be eligible for any railroad retirement benefits by January 1, 1975 (the effective date of the 1974 Act) and must have been premanently insured under the Social Security Act on one of two dates. If the retired employee (i) performed some creditable railroad service in calendar year 1974, (ii) had a "current connection with the railroad industry" as of December 31, 1974 (or such later date as he retired),[10] or (iii) completed 25 years of railroad service as of December 31, 1974, he is entitled to a "windfall" benefit if he was permanently insured under the Social Security Act as of December 31, 1974. 45 U.S.C. 231b(h)(1). However, if the retired employee left the railroad industry with 10 years of service before 1974 without having completed 25 years of service and did not retain a "current connection" with the industry at the close of 1974, he is entitled to a "windfall" benefit only if he

[10] The term "current connection with the railroad industry" is defined in 45 U.S.C. 231(*o*) to mean, in general, employment in the railroad industry in 12 of the preceding 30 calendar months. Thus, an employee who left the railroad industry well before 1974 but who was reemployed in the industry after 1974 in 12 of the 30 months preceding his retirement is eligible to receive a "windfall component" if he had the requisite 10 years of railroad service and was permanently insured under the Social Security Act as of December 31, 1974.

was permanently insured under the Social Security Act at the end of the year in which he left the railroad industry. 45 U.S.C. 231b(h)(2).[11]

Thus, a retired employee who left the railroad industry for other employment before 1974, was not permanently insured under the Social Security Act when he did so, and did not return to the railroad industry and reestablish a "current connection" with it before retiring cannot receive *any* "windfall" benefit, even if he performed sufficient nonrailroad service after he left the railroad industry to become perma-

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[11] The amount of the "windfall component" is greater under subsection (1) than under subsection (2) of 45 U.S.C. 231b(h). The former consists of a social security level benefit based on social security service through December 31, 1974, plus a social security level benefit based on railroad service through December 31, 1974, minus a social security level benefit based on combined social security and railroad service through December 31, 1974. The formula used under subsection (2) is similar, except that only social security service through the year the individual left the railroad industry, rather than through December 31, 1974, is used in computing the amount of the benefit. This difference in the date through which social security service is counted corresponds, of course, to the difference under the two subsections in the date by which the retired employee must have been permanently insured under the Social Security Act in order to be eligible for any "windfall component."

The "windfall" benefits under 45 U.S.C. 231b(h)(1) and (2) are frozen as of the date of the individual's retirement (H.R. Rep. No. 93-1345, *supra*, at 11-12; S. Rep. No. 93-1163, *supra*, at 11-12), much as the Commission on Railroad Retirement recommended. See note 7, *supra;* compare 45 U.S.C. 231b(h)(5). Thus, the relative gap between those who receive these special benefits and those who do not will narrow as the social security and railroad retirement annuities are increased with the cost of living.

nently insured under the Social Security Act by December 31, 1974. Appellee Fritz and the class he represents fall into this category (J.S. App. 2a), and they herein challenge their resultant ineligibility to receive a "windfall" benefit.

2. On July 26, 1976, L. Jackson Lipp and William D. Gibson filed a class action in the United States District Court for the Southern District of Indiana, seeking a declaratory judgment that 45 U.S.C. 231b (h) is unconstitutional under the Due Process Clause of the Fifth Amendment because it irrationally distinguishes between classes of annuitants. The government moved to dismiss on October 8, 1976, arguing, *inter alia*, that because the named plaintiffs were not yet eligible to retire, they did not have standing to bring the suit. In response to the government's motion to dismiss the first complaint, an amended complaint was filed on December 8, 1976, naming as an additional plaintiff appellee Gerhard H. Fritz, a former railroad worker who had left the industry in 1956 and had become eligible to receive railroad retirement benefits upon his retirement from all employment on October 1, 1976, but who was not eligible to receive any "windfall" benefits. The district court eventually certified a class, represented by appellee Fritz, of all persons eligible to retire between January 1, 1975, and January 31, 1977, who were permanently insured under the Social Security Act as of December 31, 1974, but who were not eligible to receive any "windfall component" because they had left the railroad industry before 1974, had no "cur-

rent connection" with it at the end of 1974, and had less than 25 years of railroad service (J.S. App. 2a).

3. On cross motions for summary judgment, the district court held that 45 U.S.C. 231b(h) creates an irrational and unconstitutional distinction between classes of annuitants. It therefore ordered (J.S. App. 33a-34a) that members of appellee's class be paid the full "windfall component" payable under 45 U.S.C. 231b(h)(1).[12]

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[12] The district court's certification of a class of former railroad employees who had retired by January 31, 1977, avoided the issue, raised by the government in its motion to dismiss the first complaint, that persons who had not yet retired and were therefore not yet eligible to receive railroad retirement benefits suffered no present injury entitling them to bring the suit. The district court nevertheless concluded that its holding that 45 U.S.C. 231b(h) unconstitutionally distinguishes between annuitants would apply equally to railroad employees who retired after January 31, 1977 (J.S. App. 31a-32a). The court, in its judgment, therefore ordered plaintiffs to initiate proceedings to compel the Railroad Retirement Board to prepare a plan (if the Board did not prepare such a plan on its own initiative) for the payment of benefits to the members of this "general class" of all employees who retired after January 31, 1977, in the same manner as the court had ordered benefits paid to the members of the certified class (J.S. App. 34a-35a).

The district court's reasoning would probably also require the payment of the greater "windfall" benefits provided under 45 U.S.C. 231b(h)(1) to persons who left the railroad industry before 1974 but were qualified to receive the reduced "windfall" benefit under 45 U.S.C. 231b(h)(2) because they were permanently insured under the Social Security Act when they left the industry.

Comparable "windfall" benefits are also provided in 45 U.S.C. 231b(h)(3) and (4) for employees who had 10 years of railroad service and whose spouses were permanently in-

The district court acknowledged that the distinction drawn by Congress with respect to the total amount of benefits a retired employee may receive does not result in deprivation of a fundamental right or impose a burden based upon suspect criteria and that the discrimination against appellee's class must therefore be "arbitrary, capricious and irrational before such discrimination can be held unconstitutional" (J.S. App. 28a). However, after finding that the 1974 Act was intended "to place the Railroad Retirement Fund on a sound actuarial basis and to protect completely the rights of those persons entitled before December 31, 1974, to receive their full benefits under both Social Security and Railroad Retirement earned and 'vested' under the previous law" (*ibid.*), the court concluded (*id.* at 30a) that the discrimination against appellee was not rationally related to these congressional purposes.

The district court relied primarily on the recommendations of the Commission on Railroad Retirement in support of its conclusion that the 1974 Act had the purpose to "protect completely" the dual benefits of railroad employees. The court conceded

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sured under the Social Security Act either in 1974 or at the time when the covered employee left the railroad industry. And 45 U.S.C. 231c(e) provides for the payment of "windfall" benefits to a spouse of a railroad employee who satisfied the criteria of eligibility for a "windfall" benefit under 45 U.S.C. 231b(h)(1) or (2). See also Sections 204(a)(4), 206(3) and 207(3) of the 1974 Act (45 U.S.C. 231 note) (transitional protection for such persons already receiving dual benefits when the Act was passed).

(J.S. App. 14a-15a, 18a-19a, 30a) that the Joint-Labor-Management Railroad Retirement Negotiating Committee had departed from this aspect of the Commission's proposal by recommending that Congress treat retirees in appellee's position in the manner mandated by 45 U.S.C. 231b(h). But the court found (J.S. App. 30a) that this departure was motivated by a desire on the part of the labor negotiators on the Joint Committee to increase future benefits for persons still in the railroad industry at the expense of those, such as appellee, who had left. In the court's view (*ibid.*), this breach of what it characterized as the "railroad labor union's duty of fair representation" owed to appellee heightened the arbitrariness, capriciousness, and irrationality of the distinction drawn in 45 U.S.C. 231b(h).

Finally, the court was influenced by what it found to be the Joint Committee's inadequate explanation of its recommendation to Congress, the failure of the Joint Committee and the Railroad Retirement Board to notify representatives of appellee's class of the proposed changes, and the failure of the responsible committees of Congress to invite representatives of appellee's class to testify regarding the legislation (J.S. App. 13a, 15a, 17a-19a). In sum, the court found that Congress did not understand the law it enacted, in part because of what it considered to be the Joint Committee's obfuscation, and that this factor bore "adversely on the rationality of a statutory

discrimination between similarly situated persons" (*id.* at 30a).[13]

SUMMARY OF ARGUMENT

A. Railroad retirement annuities are not contractual in nature, and Congress may alter or eliminate them at any time. *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 575. When Congress passed the Railroad Retirement Act of 1974, it therefore could have wholly eliminated dual benefits accruing under the Social Security Act and Railroad Retirement Act by

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[13] Appellee does not take issue with the failure of the district court to convene a three-judge district court in this case pursuant to 28 U.S.C. (1970 ed.) 2282, which was repealed as of August 12, 1976, except as to actions commenced on or before that date. Pub. L. No. 94-381, Sections 2 and 7, 90 Stat. 1119-1120. For the reasons set forth in the Jurisdictional Statement (pages 11-12 n.6), we believe the district court properly declined to hold that the amended complaint filed on December 8, 1976, must relate back to July 26, 1976, the date of the original complaint, for purposes of the three-judge court provision that had been repealed in the interim. The named plaintiffs in the original complaint are not members of the certified class represented by appellee Fritz and were not yet eligible to retire when the complaint was filed. Cf. *Califano* v. *Yamasaki*, 442 U.S. 682, 704 (1979); *Mathews* v. *Diaz*, 426 U.S. 67, 71-72 n.3 (1976).

This Court has jurisdiction of this appeal under 28 U.S.C. 1252, even if the district court erred in failing to convene a three-judge court. *McLucas* v. *DeChamplain*, 421 U.S. 21, 31-32 (1975); see also *Weinberger* v. *Salfi*, 422 U.S. 749, 763 n.8 (1975). If the Court were to conclude that a three-judge court should have been convened, the proper course would be to vacate the judgment below and remand with directions to convene a three-judge court. *McLucas* v. *DeChamplain*, *supra*, 421 U.S. at 32 n.12.

declining to include *any* grandfather protection for present and former railroad employees who were already receiving such benefits or had an expectation of doing so when they retired. But Congress chose instead to provide some grandfather protection for those individuals who it believed had the strongest equitable claim to receiving dual benefits under prior law. Such a grandfather clause embodying a "gradual approach to the problem is not constitutionally impermissible." *New Orleans* v. *Dukes*, 427 U.S. 297, 305 (1976).

B. The lines drawn in establishing eligibility criteria for grandfather protection under the 1974 Act are reasonably related to the achievement of a number of legislative purposes underlying that Act.

1. A principal purpose of the "windfall" benefit provisions in Section 204(a)(3) of the 1974 Act and 45 U.S.C. 231b(h) is to acknowledge the relative equities of beneficiaries. In enacting those sections, Congress concluded that retired railroad workers already receiving dual benefits on the effective date of the 1974 Act and other individuals who had 25 years of railroad service or were affiliated with the railroad industry either in 1974 or when they later retired had a somewhat stronger equitable claim to receive "windfall" benefits than did individuals such as appellee, who had left the industry before 1974 and never returned to it before their retirement. Congress could rationally determine in this regard that individuals who remained in the industry generally would be more dependent on a railroad annuity for retirement security than those who took

employment elsewhere, and would be more deserving of "windfall" benefits because of their continued commitment to the industry for which the special statutory retirement program was designed.

Moreover, persons in appellee's position did not even earn their statutory entitlement to dual benefits under prior law while they were still employed in the railroad industry. They accrued sufficient non-railroad service to be permanently insured under the Social Security Act, and therefore became entitled to dual benefits under prior law, only *after* they left the industry and were no longer in employment covered by the Railroad Retirement Act.

2. The eligibility criteria in 45 U.S.C. 231b(h) also further the more general statutory purpose of the 1974 Act of providing retirement benefits for career railroad employees. *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 573-574. Appellee concedes that the allowance of "windfall" benefits to all persons with 25 years of service is appropriate because such persons may properly be considered career employees. The requirement that an individual have attained at least 10 years of railroad service by December 31, 1974, in order to be eligible for a "windfall" benefit, which appellee also concedes is appropriate, is likewise intended to be some measure of career status.

By the same token, the requirement that an individual with more than 10 but less than 25 years of railroad service as of December 31, 1974 have a "current connection" with the railroad industry on that date or when he later retires in order to be

eligible for a full "windfall" benefit under 45 U.S.C. 231b(h)(1) is reasonably related to identifying persons likely to have career status. The "current connection" test has been used since 1946, for example, in determining eligibility for disability and survivor benefits intended for career railroad employees (45 U.S.C. 231a(a)(1)(iv), 231a(d)(1)), and it has been used since 1966 in determining eligibility for a special supplemental annuity under 45 U.S.C. 231a(b)(1). Based on this experience, Congress could also reasonably conclude in 1974 that individuals who had a "current connection" with the industry when Congress considered and passed the legislation or when they later retired were more likely than others to be career employees deserving of "windfall" benefits. In addition, the "current connection" criterion, like the alternative criterion of some railroad employment in 1974, is reasonably related to the statutory purpose of opening railroad jobs for younger workers by creating an incentive for older workers to retire (*Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 573-574), because the incremental retirement incentive provided by eligibility for "windfall" benefits obviously would open additional railroad jobs only if the individual was still in the industry when he retired.

3. Finally, the restrictions on receipt of "windfall" benefits under the 1974 Act avoid the substantial financial drain on the Railroad Retirement Account or on general revenues that would have resulted from broader grandfather protection. The district court's

order in this case, for example, would result in payment of an additional $119 million in "windfall" benefits for each of the next 20 years. For this reason, if the Court were to conclude that 45 U.S.C. 231b(h) creates an unconstitutional distinction in the allocation of "windfall" benefits, the appropriate remedy would be to strike the "windfall" provisions altogether (except to the extent such benefits are made available to persons with 25 years of railroad service or who were already receiving dual benefits in 1974), rather than to expand the coverage in a way that would cost $119 million annually.

C. The district court found the statutory classification in 45 U.S.C. 231b(h) irrational in part because it was inconsistent with what the court found to be the statutory purpose to "protect completely" the entitlement to "windfall" benefits of all present and former employees (including appellee) who had 10 years of railroad service and were permanently insured under the Social Security Act on December 31, 1974. The court's characterization of the reasons for the 1974 Act is clearly incorrect, because Congress' purpose *not* to protect persons in appellee's class is evident from the plain language of 45 U.S.C. 231b (h) as well as the committee reports and hearings on the bill. There is also no merit to the district court's conclusion that the Joint Labor-Management Railroad Retirement Negotiating Committee acted unreasonably or violated a duty of fair representation to appellee in developing and submitting its legislative recommendations, which excluded appellee from eligibility for "windfall" benefits. In any event, the

Joint Committee's actions have no bearing on the constitutionality of the statute Congress enacted. It is likewise irrelevant that Congress may have had alternative means to correct the financial difficulties of the railroad retirement system, because the allocation of social welfare benefits from a limited pool of resources is a legislative, not a judicial, function.

ARGUMENT

45 U.S.C. 231b(h) SATISFIES THE DUE PROCESS CLAUSE BECAUSE CONGRESS HAD A RATIONAL BASIS FOR EXCLUDING FROM ELIGIBILITY FOR "WINDFALL" RAILROAD RETIREMENT BENEFITS THOSE INDIVIDUALS WHO LEFT THE RAILROAD INDUSTRY PRIOR TO 1974, BEFORE THEY WERE PERMANENTLY INSURED UNDER THE SOCIAL SECURITY ACT

A. Section 3(h) Of The Railroad Retirement Act Of 1974 Steers A Middle Course Between The Concededly Constitutional Options Of Providing Broad Grandfather Protection And Providing No Grandfather Protection At All

Congress was confronted in 1974 with the possible bankruptcy of the Railroad Retirement Account by 1981, stemming in large measure from the drain on the Account caused by annuitants who received benefits under both the Social Security Act and the Railroad Retirement Act. At the same time, Congress recognized that many present and former railroad employees might have a legitimate expectation of receiving dual benefits if they satisfied the eligibility requirements under the two statutes before retirement.

As the district court recognized (J.S. App. 31a) and appellee concedes (Motion to Affirm 7), railroad retirement annuities, like social security benefits, are not contractual, and Congress may alter or eliminate them at any time. *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 575. See also *Flemming* v. *Nestor*, 363 U.S. 603, 610-611 (1960). Accordingly, Congress could have wholly eliminated dual benefits under the Social Security and Railroad Retirement Acts by declining to include *any* "windfall component" or comparable grandfather protection in the 1974 Act, even for retired employees who had already begun to receive dual benefits. This would have immediately halted the severe financial drain on the Railroad Retirement Account occasioned by dual benefits, but at the expense of those individuals having the strongest expectation of receiving them.

Alternatively, Congress could have written a broad grandfather clause that preserved the potential for receiving maximum benefits under the Social Security Act and Railroad Retirement Act for everyone who had ever worked in the railroad industry prior to the effective date of the 1974 Act, whether or not he had left the railroad industry for other work, had yet attained 10 years of railroad service, or had performed any nonrailroad service that could be credited toward eligibility under the Social Security Act. But this would have permitted a sizable drain on the Account for many years in order to protect even the remotest expectation of receiving dual benefits.

Congress instead chose a middle course, tailoring the class of potential recipients of "windfall" benefits to correspond more precisely to that which it believed had the strongest equitable claim to receive such benefits. Although the more drastic options of providing grandfather protection for either everyone or no one who had been employed in the railroad industry before the effective date of the 1974 Act would concededly have been constitutional, appellee nevertheless argues that the carefully tailored accommodation Congress fashioned between these polar extremes violates the Due Process Clause. But a grandfather provision embodying a "gradual approach to the problem is not constitutionally impermissible." *New Orleans* v. *Dukes*, 427 U.S. 297, 305 (1976). Once it is conceded that Congress may appropriately draw a line somewhere in establishing threshold qualifications for special retirement benefits, Congress' choice is not unconstitutional merely because a court may have drawn the line elsewhere as a matter of policy. *Mathews* v. *Diaz*, 426 U.S. 67, 82-84 (1976).

B. Section 3(h) Of The 1974 Act Is Rationally Related To The Act's Legislative Purposes

The distinctions drawn in 45 U.S.C. 231b(h) on the basis of an employee's affiliation with the railroad industry in 1974 or upon retirement do not burden fundamental rights or create classifications that rest upon suspect criteria. *Vance* v. *Bradley*, 440 U.S. 93, 96-97 (1979); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 40 (1973). Thus, the statutory classifications are unconstitutional only

if "the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the legislature's actions were irrational." *Vance* v. *Bradley, supra,* 440 U.S. at 97. See also *Califano* v. *Aznavorian,* 439 U.S. 170, 174-175 (1978); *Califano* v. *Jobst,* 434 U.S. 47, 53 (1977); *Califano* v. *Goldfarb,* 430 U.S. 199, 210 (1977). As the Court stated in *Flemming* v. *Nestor, supra,* 363 U.S. at 611:

> Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as [Social Security], we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.

See also *Weinberger* v. *Salfi,* 422 U.S. 749, 768 (1975); *Richardson* v. *Belcher,* 404 U.S. 78, 80-81 (1971). Here, 45 U.S.C. 231b(h) is rationally related to the statutory purposes of recognizing the relative equities of beneficiaries, furnishing benefits to career railroad employees, and protecting the financial integrity of the Railroad Retirement Account.[14]

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[14] It "is, of course, constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," *Flemming* v. *Nestor, supra,* 363 U.S. at 612 (although, as explained below, the background and legislative history of the 1974 Act indicate that the factors mentioned in the text in fact were the reasons for the revisions in the Railroad Retirement Act). "Legislatures are presumed to have acted constitutionally * * * and their statutory classifications will be set aside only

1. ***Recognizing The Relative Equities Of Beneficiaries***

A principal rationale of any grandfather provision is equity. Congress concluded that retired workers already receiving dual benefits in 1974 and other present and former employees who had 25 years of service in the railroad industry, had worked in the industry in 1974, or had a current connection with the industry at the end of that year or at the time of their subsequent retirement had somewhat stronger equities in retaining the expectation of receiving the "windfall" of dual benefits afforded by the Railroad Retirement Act than did those—such as appellee—who had left the industry prior to 1974 and never returned before their retirement. H.R. Rep. No. 93-1345, *supra*, at 11; S. Rep. No. 93-1163, *supra*, at 11.[15] In this regard, Congress' judgment was in ac-

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if no grounds can be conceived to justify them." *Schilb* v. *Kuebel*, 404 U.S. 357, 364 (1971), quoting *McDonald* v. *Board of Election*, 394 U.S. 802, 809 (1969). See also *Vance* v. *Bradley*, *supra*, 440 U.S. at 111; *Dandridge* v. *Williams*, 397 U.S. 471, 485-487 (1970). Cf. *North Dakota Pharmacy Board* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156, 166-167 (1973).

[15] Providing "windfall" benefits to persons with some railroad employment in 1974 is, of course, consistent with the very essence of a grandfather clause, because only these individuals were actually in employment covered by the Railroad Retirement Act at the time Congress considered and passed the extensive amendments to that Act. Providing benefits to persons who did not have railroad employment in 1974 but retained a "current connection" with the railroad industry at the end of that year has the effect of protecting workers who may have been on furlough or otherwise temporarily out of railroad work when the Act was considered and

cord with that of the Joint Labor-Management Railroad Retirement Negotiating Committee, which concluded that persons who left the industry permanently prior to 1974 and were not yet retired by 1974 "have a less strong equitable claim than those who have remained with the industry." Letter of April 10, 1974, from the Joint Labor-Management Railroad Retirement Negotiating Committee to Chairman Williams of the Senate Labor and Public Welfare Committee, reprinted at 120 Cong. Rec. 18391-18392 (1974).[16]

Congress could rationally determine that persons who left railroad employment permanently would, in general, be less dependent on their railroad retirement annuities for retirement security than those who remained in the industry, perhaps because their nonrailroad employers might have a pension plan similar to that provided under the Act. Congress could also rationally conclude that individuals who re-

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passed but who fully intended to return to railroad work. Ensuring grandfather protection for those individuals is therefore consistent with the decision to provide grandfather protection for everyone actually employed in the railroad industry in 1974.

[16] See also *Restructuring of the Railroad Retirement System: Hearings on H.R. 15301 Before the House Comm. on Interstate and Foreign Commerce*, 93d Cong., 2d Sess. 168, 221 (1974) (hereinafter "*1974 House Hearings*"); *Restructuring of the Railroad Retirement System, 1974: Hearings on S. 3612 Before the Subcomm. on Railroad Retirement of the Senate Comm. on Labor and Public Welfare*, 93d Cong., 2d Sess. 301-302, 343-344 (1974) (hereinafter "*1974 Senate Hearings*").

mained employed by a railroad have in general demonstrated a greater commitment to or affinity for the industry for which Congress designed the special statutory retirement program. See *Railroad Retirement Act Amendments, 1976: Hearing on S. 3662 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 94th Cong., 2d Sess. 50 (1976). Appellee Fritz, for example, left railroad employment in 1956 and never returned prior to his retirement in 1976 (J.S. App. 2a).[17]

Moreover, the Joint Committee recommended and Congress provided in 45 U.S.C. 231b(h)(2) that even persons who left the railroad industry prior to 1974

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[17] Appellee cites class member William Kirby as an example of someone who left railroad work involuntarily, and he suggests thereby that the statutory classification cannot be defended on the ground that it rewards loyalty to the industry (Motion to Affirm 19; see also *id.* at 9). But there is no indication that Kirby—who, incidentally, left railroad work in 1951 (see Affidavit of William A. Kirby, dated February 20, 1979)—is typical.

Indeed, appellee pointedly fails to describe the experience of class member Horace Lindsey, the only other individual mentioned in the Motion to Affirm (at page 19). Lindsey chose to leave the railroad industry in 1955 rather than relocate his family to a point, some 120 miles from his home, where he had been offered railroad employment (Affidavit of Horace Lindsey, dated February 15, 1979). Presumably a less senior railroad employee accepted that job, in part, perhaps, to maintain his affiliation with the industry and, again perhaps, at some hardship to himself and his family.

The foregoing merely underscores the wisdom of this Court's observation that a "broad legislative classification must be judged by reference to characteristics typical of the affected classes rather than by focusing on selected, atypical examples." *Califano* v. *Jobst*, 434 U.S. 47, 55 (1977).

without retaining a "current connection" with it would nevertheless be eligible to receive a "windfall" benefit, lesser in amount, *if* they had attained 10 years of railroad service and were already permanently insured under the Social Security Act at the close of the year in which they last performed railroad work, rather than at the close of 1974. Thus, the only otherwise eligible former railroad employees denied "windfall" benefits are those, like appellee, who had no statutory entitlement to dual benefits at the time they left the railroad industry but *thereafter* (and prior to January 1, 1975) became eligible for dual benefits when they performed enough nonrailroad work to become permanently insured under the Social Security Act. Congress could legitimately conclude that persons who had actually accrued a statutory entitlement to dual benefits while still employed in the railroad industry had a greater equitable claim to those benefits than the members of appellee's class, who were no longer even in employment covered by the Railroad Retirement Act when they became eligible for dual benefits. Cf. *Railroad Retirement Board* v. *Alton R.R.*, 295 U.S. 330, 348-349 (1935); *id.* at 389 (Hughes, C.J., dissenting).

The district court concluded that the irrationality or unfairness of excluding persons in appellee's position from eligibility for "windfall" benefits was underscored by the fact that they had contributed to these benefits through payroll taxes and had "earned" them—by accruing 10 years of railroad service and becoming permanently insured under the Social Se-

curity Act—in accordance with the law as it stood prior to January 1, 1975 (J.S. App. 7a, 29a, 30a). But the fact that employees had paid payroll taxes under both the Social Security Act and the Railroad Retirement Act is of no moment, because Congress provided in 45 U.S.C. 231e(d) for the refund of excess employment taxes paid by persons ineligible to receive "windfall" benefits, in order to prevent any perceived unfairness. And the fact that persons in appellee's position may have satisfied the threshold eligibility requirement for dual benefits under prior law is beside the point, because it is conceded that Congress could modify or repeal benefit provisions under that law at any time. *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 575.

2. *Providing Benefits To Career Railroad Employees*

As noted above, the Railroad Retirement Act "provides a system of retirement and disability benefits for persons who pursue careers in the railroad industry." *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 573. The lines Congress drew in fashioning the grandfather provisions in the 1974 Act are tailored to this purpose.

For example, appellee concedes the validity of Congress' decision to provide "windfall' benefits to persons who had at least 25 years of railroad service prior to the effective date of the 1974 Act, even if they had left the railroad industry before 1974 and retained no "current connection" with the industry

then or when they retired, because "[i]t is reasonable to classify railroaders with more than 25 years as 'career' railroaders who are in a different position than those with 10-25 years of services" (Motion to Affirm 8 n.4).[18] Similarly, appellee does not dispute Congress' determination to deny dual benefits to those who had less than 10 years of railroad service by January 1, 1975, the effective date of the 1974 Act, because "the ten-year mark has historically and reasonably divided vested and non-vested railroaders" (*ibid.*).[19] The requirement that an employee have at least 10 years of railroad service in order to receive any railroad retirement benefits, now contained in 45 U.S.C. 231a(a)(1), is likewise designed to restrict

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[18] Appellee notes in this regard that "the setting of arbitrary periods of service as eligibility requirements does not implicate the equal protection clause" (Motion to Affirm 8 n.4). The same 25-year eligibility requirement is imposed as a condition to receiving the special supplemental annuity provided in 45 U.S.C. 231a(b)(1), which was intended to be a reward for career service in the industry. See *Railroad Retirement Act—Supplemental Benefits: Hearing on H.R. 17285 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce,* 89th Cong., 2d Sess. 16, 36 (1966).

[19] Appellee also does not take issue with the requirement that a person who had not yet retired by the end of 1974 must nevertheless have become permanently insured under the Social Security Act as of the effective date of the 1974 Act (Motion to Affirm 8). We assume that appellee similarly does not dispute Congress' decision to preserve dual benefits for retirees who were already receiving them as of the effective date of the 1974 Act (Pub. L. No. 93-445, Section 204(a)(3), 88 Stat. 1353). This is the most elementary type of grandfather clause.

benefits to those who have made railroad work a major part of their careers.[20]

Appellee does challenge, however, the requirement that a beneficiary who was not already receiving dual benefits and did not have 25 years of railroad service by the end of 1974 must have had a "current connection with the railroad industry" [21] at the end of 1974 or on the date of his subsequent retirement. It is irrational, appellee asserts (Motion to Affirm 3-4, 18-19), to use this factor to distinguish among annuitants who are otherwise similarly situated in that they were permanently insured under the Social Security Act and had 10 years of railroad service as of the effective date of the 1974 Act. But what appellee overlooks is that the "current connection" test, like the vesting test, has traditionally been used to

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[20] The 10-year eligibility requirement for the receipt of any railroad retirement benefits was first added to the Railroad Retirement Act in 1951 (ch. 632, Section 2, 65 Stat. 683), to confine the railroad retirement system to meeting the needs of career railroad employees. S. Rep. No. 890, 82d Cong., 1st Sess. 14-16, 27, 56, 68 (1951); H.R. Rep. No. 976, 82d Cong., 1st Sess. 47-48 (1951) (minority views). After passage of the 1951 amendments, service of less than 10 years was credited toward eligibility under the Social Security Act. Ch. 632, Section 22(a), 65 Stat. 687; see 45 U.S.C. 231q(2). Thus, contrary to the district court's findings of fact (J.S. App. 6a), the present 45 U.S.C. 231b(h) does not represent Congress' first restriction on the receipt of railroad retirement benefits already "earned."

[21] As noted above, the term "current connection with the railroad industry" is defined in 45 U.S.C. 231(*o*) to mean employment in the railroad industry in 12 of the preceding 30 months.

ensure some measure of career status as a prerequisite to receiving benefits under the Railroad Retirement Act.

Congress first developed the "current connection" concept in 1946 as an eligibility requirement for both occupational disability and survivor annuities under the Railroad Retirement Act of 1937. Ch. 709, Sections 203, 205, 213, 60 Stat. 726-735. In testimony before the House Committee concerning this eligibility requirement, the Chairman of the Railroad Retirement Board explained that the "current connection" test was intended to divide persons who have worked in the railroad industry into two groups: "[t]hose who are regular railroad employees and those who are not." *Railroad Retirement: Hearings on H.R. 1362 Before the House Comm. on Interstate and Foreign Commerce,* 79th Cong., 1st Sess. 168 (1945). The current connection eligibility requirement for survivor and occupational disability annuities was carried forward in the 1974 Act. 45 U.S.C. 231a(a)(1)(iv) and 231a(d)(1).

In 1966, when Congress amended the Railroad Retirement Act of 1937 to provide for the payment of the supplemental annuity now provided under 45 U.S.C. 231a(b)(1) to certain long-term railroad employees (see notes 2 and 18, *supra*), a "current connection" with the industry at the time of retirement was made one of the conditions to receipt of the annuity. Pub. L. No. 89-699, Section 1, 80 Stat. 1073. This supplemental annuity was intended as a reward for

career service,[22] and it was therefore quite appropriate for Congress to require that railroad employees, in addition to having 25 years of railroad service, demonstrate their commitment to the industry by retaining an affiliation with it at the time of their retirement.

Against this background, it also was reasonable for Congress to adopt the "current connection" test as an eligibility criterion for receipt of a "windfall" benefit under the 1974 Act. Congress could legitimately determine that those who were affiliated with the railroad industry when the Act was passed in 1974, or who returned to it before their retirement, were more likely than those who had left the industry and never returned to be among the class of "persons who pursue careers in the railroad industry"—the class for whom the Railroad Retirement Act was designed. *Hisquierdo* v. *Hisquierdo, supra,* 439 U.S. at 573. Cf. *Railroad Retirement Board* v. *Alton R.R., supra,* 295 U.S. at 348-349; *id.* at 389 (Hughes, C.J., dissenting).

Moreover, as the Court noted in *Hisquierdo,* the Act has as one of its principal purposes to "encourage older workers to retire by providing them with the means 'to enjoy the closing days of their lives with peace of mind and physical comfort,' and so [to] 'assure more rapid advancement in the service' and also more jobs for younger workers." 439 U.S.

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[22] See *Railroad Retirement Act—Supplemental Benefits: Hearing on H.R. 17285 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce,* 89th Cong., 2d Sess. 16, 36 (1966).

at 573-574, quoting H.R. Rep. No. 1711, 74th Cong., 1st Sess. 10 (1935). See also *Vance* v. *Bradley, supra,* 440 U.S. at 101. It was not necessary in 1974 for Congress to retain whatever incremental incentive to retire is created by the "windfall" benefit provision for those who had already left the railroad industry—*i.e.*, for those whose retirement would not assure more rapid advancement and more jobs for younger workers in the industry.

Appellee contends that all persons who satisfied the minimum duration-of-service eligibility requirements under the Railroad Retirement and Social Security Acts by December 31, 1974, are similarly situated and constitutionally entitled to identical treatment with respect to "windfall" benefits (Motion to Affirm 3-4, 18-19). But Congress may condition eligibility for benefits such as these on the *character* as well as the *duration* of an employee's ties to the industry, *Mathews* v. *Diaz, supra,* 426 U.S. at 74 n.7, 82-83, and has reasonably done so here in requiring a current nexus to the railroad industry.[23]

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[23] Appellee also questions the rationality of the provision affording full "windfall" benefits under 45 U.S.C. 231b(h)(1)(i) to a person who had *any* railroad employment in 1974, so long as he had 10 years of railroad employment and was permanently insured under the Social Security Act at the end of 1974 (Motion to Affirm 8-9, 19). But this appears to have been nothing more than a means to provide reassurance to affected persons who were actually working for railroads during the year when Congress was considering legislation to accomplish a major restructuring of their retirement system. The fact that an individual had some railroad em-

3. *Preserving the Fiscal Integrity of the Railroad Retirement System*

The Commission on Railroad Retirement, the Joint Labor-Management Railroad Retirement Negotiating Committee, and Congress all recognized that restoring the fiscal integrity of the railroad retirement system required the termination of dual benefits. The 1974 Act eliminated almost all of the actuarial deficit then facing the Railroad Retirement Account, principally by barring all future entitlement to dual benefits.

Congress was able to provide grandfather protection for persons who were already retired under Sec-

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ployment in 1974 is also a reasonably reliable indicator of *future* career status, even if it does not necessarily indicate such status in 1974.

Moreover, for those who may have left railroad employment during 1974, this eligibility criterion is fully consistent with that in 45 U.S.C. 231b(h)(2), which provides that eligibility for a "windfall" benefit depends on whether the individual was permanently insured under the Social Security Act at the end of his last year of railroad employment—in this case, December 31, 1974. It also seems likely that most persons who had any railroad employment in 1974 would also have had a "current connection with the railroad industry" at the end of that year—*i.e.*, railroad employment in 12 of the preceding 30 months. Thus, although appellee suggests (Motion to Affirm 8-9, 19) that it is irrational to deny him benefits while providing full "windfall" protection to a person who worked in the industry for just one day in 1974, it does not appear that any employee is afforded a benefit by this provision that he would not otherwise have been afforded under 45 U.S.C. 231b(h)(1) or (2). In any event, it is no objection to a statutory classification that "such rules [may] produce seemingly arbitrary consequences in some individual cases." *Califano* v. *Jobst*, *supra*, 434 U.S. at 53. Congress was entitled to legislate with the generality of cases in mind.

tion 204(a)(3) of the 1974 Act and for certain other present and former employees under 45 U.S.C. 231b(h), while at the same time preserving the fiscal integrity of the Railroad Retirement Account, only by authorizing the appropriation of general revenues to pay for these special benefits. Public funding of "windfall" benefits was one of the most controversial features of the 1974 Act,[24] and Congress might well have been unwilling to provide the larger public subsidy that would have been necessary to fund broader grandfather provisions. The Railroad Retirement Board has estimated, for example, that the district court's decision in this case requiring payment of full "windfall" benefits to everyone who had 10 years of railroad service and was permanently insured under the Social Security Act by December 31, 1974, would result in the annual payment of an additional $119 million in "windfall" benefits over the next 20 years —a total of $2.38 billion. Congress has a legitimate interest in protecting the public fisc through reasonable classifications in welfare legislation, and the Court has accorded the legislative branch wide latitude "in choosing among competing demands for limited public funds." *Maher* v. *Roe*, 432 U.S. 464, 479 (1977). See also *Califano* v. *Torres*, 435 U.S. 1, 5 n.7 (1978).

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[24] The provision for public funding of the deficit in the Railroad Retirement Account was the primary factor cited by President Ford in vetoing the 1974 Act. 120 Cong. Rec. 35609-35610 (1974). Congress subsequently overrode the President's veto. 120 Cong. Rec. 35616, 35898 (1974).

Indeed, even if appellee were to succeed on the merits of his constitutional argument, it does not appear that he would be entitled to the relief that he seeks and that was ordered by the district court (J.S. App. 33a-34a)—the payment of "windfall" benefits to all members of appellee's class. In our view, if the exclusion of the members of appellee's class is held unconstitutional, the appropriate relief would be to strike the "windfall" benefit provisions of the Act (except for individuals who were already receiving dual benefits by the end of 1974 or had 25 years of railroad service at that time), rather than to extend coverage in a way that the Joint Labor-Management Railroad Retirement Negotiating Committee and Congress expressly rejected in 1974. See note 33, *infra*.

Moreover, if Congress were to decline to appropriate monies to fund the additional "windfall" benefits mandated by the district court's order, that burden would fall on the Railroad Retirement Account.[25] The result would be the reemergence of a significant actuarial deficit in the Account. This would be inconsistent with the overriding purpose of the 1974 Act to restore the railroad retirement system to financial soundness. Thus, the limitations on receipt

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[25] As noted above (see note 9, *supra*), the projected cost of the "windfall" benefits provided by Congress has risen to an average of at least $499 million per year through the year 2000. However, Congress appropriated only $313 million to the Railroad Retirement Account for fiscal years 1979 and 1980. Pub. L. No. 95-480, 92 Stat. 1588; Pub. L. No. 96-123, Section 101(g), 93 Stat. 925 (see 125 Cong. Rec. H7123 (daily ed. Aug. 2, 1979)).

of "windfall" benefits contained in 45 U.S.C. 231b (h) serve Congress' legitimate interest in preserving the self-supporting nature of the retirement system to the extent possible. *Geduldig* v. *Aiello*, 417 U.S. 484, 496 (1974). See also *Califano* v. *Boles*, 443 U.S. 282, 296 (1979).

If Congress were unwilling either to fund the additional "windfall" payments from general revenues or to allow the reemergence of an actuarial deficit in the Railroad Retirement Account, it would be forced eventually to cut back railroad retirement benefits, either across the board or by constricting the category of persons eligible for "windfall" benefits. The former option would reduce payments below what Congress has fixed as an adequate benefit, while the latter would frustrate Congress' goal in passing the 1974 Act of concentrating "windfall" benefits for those who it believed had the strongest equitable claim to them and who are most likely to be the career employees for whom the program was designed. See *Califano* v. *Boles*, *supra*, 443 U.S. at 296.

C. The Additional Reasons Offered By The District Court Do Not Support Its Finding That The Classification In Section 3(h) Of The 1974 Act Is Irrational

The district court's principal error was in failing to appreciate that the grandfather provisions in Section 204(a)(3) of the 1974 Act and 45 U.S.C. 231 b(h) further the legitimate congressional purpose of providing a limited pool of "windfall" benefits to those with the strongest equitable claim to them and

to those most likely to be career railroad employees. The court also erred, however, in relying on a number of reasons that it believed contributed to the irrationality of excluding appellee's class from eligibility for such benefits. These reasons, for the most part, rest on faulty factual premises and are, in any event, wholly without merit.

1. *The Supposed Congressional Purpose To "Protect Completely" The "Vested" Expectations Of All Employees*

The district court observed that the purpose of the 1974 Act was to "protect completely" the expectations on the part of all persons who had 10 years of railroad service and were fully insured under the Social Security Act as of December 31, 1974, that they would receive full dual benefits upon retirement (J.S. App. 28a). In the court's view (*id.* at 30a), the distinction in Section 231b(h) that resulted in elimination of "windfall" benefits for the members of appellee's class was not reasonably related to this purpose. The court was plainly mistaken, however, in finding a congressional purpose to "protect completely" all present and former employees' expectation of receiving "windfall" benefits. Although the Commission on Railroad Retirement did initially recommend that the benefits of persons in appellee's position not be reduced, Congress was not obliged to accept this recommendation, and it in fact declined to do so. It instead accepted the recommendations of the Joint Labor-Management Railroad Re-

tirement Negotiating Committee, which were enacted in Section 204(a)(3) of the 1974 Act and 45 U.S.C. 231b(h). See pages 11-16, *supra*.

Congress' purpose *not* to "protect completely" the benefits of all railroad employees who had 10 years of railroad service and were permanently insured under the Social Security Act on the effective date of the 1974 Act—and particularly those employees in appellee's class—appears in the very language of 45 U.S.C. 231b(h) itself. See *Barrett* v. *United States*, 423 U.S. 212, 217 (1976). And if it were necessary to look beyond the clear language of the statute, the committee reports fully explain the operation of the "windfall" benefit provisions and the exclusion of those in appellee's position. H.R. Rep. No. 93-1345, *supra*, at 11-12, 38-40; S. Rep. No. 93-1163, *supra*, at 11-12, 38-39.[26] This legislative history conclusively refutes the district court's finding (J.S.

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[26] Both reports state that employees who left the railroad industry after qualifying for benefits under the Railroad Retirement Act "without having 25 years of railroad service and who do not now have a current connection to the railroad industry * * * would not receive a dual benefit, upon retirement, unless they also had fully qualified under Social Security by the close of the year prior to 1975 in which they left railroad service" (H.R. Rep. No. 93-1345, *supra*, at 12; S. Rep. No. 93-1163, *supra*, at 12). Comparable statements were made in the reports' section-by-section analyses of the bill (H.R. Rep. No. 93-1345, *supra*, at 39; S. Rep. No. 93-1163, *supra*, at 38-39).

The district court's and appellee's reliance (J.S. App. 23a-24a; Motion to Affirm 10) on general statements in the introductory sections and elsewhere in the committee reports for the proposition that Congress intended to preserve "wind-

App. 30a) that Congress was "unaware" of what it enacted in 45 U.S.C. 231b(h),[27] even assuming that the Court may appropriately look behind the detailed and plain language of the Act and attach significance to whether individual legislators may have fully understood the precise impact of the statutory classification. See *Delaware Tribal Business Committee* v. *Weeks*, 430 U.S. 73, 89 (1977); *Vance* v. *Bradley*, *supra*, 440 U.S. at 111.

2. *The Work of the Joint Labor-Management Railroad Retirement Negotiating Committee*

The district court also erred in concluding that the irrationality of the classification was supported by the manner in which the Joint Labor-Management Railroad Retirement Negotiating Committee developed its recommendations and submitted them to Congress. Contrary to the district court's apparent understanding (J.S. App. 10a, 12a-13a), the Joint Committee was not directed to adhere to the recommendations of the Commission on Railroad Retirement; the Joint Committee was required merely to take the Commission's recommendations into account in developing a draft bill for submission to Congress. See Pub. L. No. 93-69, Section 107(c)(1), 87 Stat.

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fall" benefits for everyone who was "vested" under both Acts is therefore misplaced. H.R. Rep. No. 93-1345, *supra*, at 2, 6; S. Rep. No. 93-1163, *supra*, at 2.

[27] As explained at pages 47-48, *infra*, representatives of the Joint Labor-Management Railroad Retirement Negotiating Committee also fully explained the operation of the bill to Congress.

165. But, in any event, the issue here is the constitutionality of an Act of Congress, not the Joint Committee's fidelity to its mission. Even if the failure of the labor representatives on the Joint Committee to insist on absolutely equal benefits for persons such as appellee would be considered to be a violation of the union's duty of fair representation in a collective bargaining context (but see *Humphrey* v. *Moore*, 375 U.S. 335, 349 (1964); *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338-343 (1953); cf. *Chemical Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971)),[28] that defect would have no bearing on the

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[28] Appellee contends (Motion to Affirm 6, 11-12, 14), and the district court found (J.S. App. 11a-13a), that the Joint Committee sacrificed "windfall" benefits that would have been paid to members of the class appellee represents in order to fund increased benefits under the 1974 Act that added an additional 3% to the actuarial deficit of the Railroad Retirement Account. Neither the district court nor appellee has cited any portion of the legislative record that establishes a direct *quid pro quo* relationship between the two.

In any event, the three benefit changes recommended by the Joint Committee were fully in accord with congressional policy. Two-thirds of the additional 3% actuarial deficit was attributable to an increase in the level of benefits under 45 U.S.C. 231c(g) for widows and other survivors from 110% to 130% of comparable social security benefits (see 120 Cong. Rec. 18393 (1974)); in this regard, the Joint Committee merely followed the similar recommendation of the Commission on Railroad Retirement that such benefits be set at 125% of social security benefits (*ibid.*; *Report of the Commission on Railroad Retirement* 337). Thus, the impetus for most of the increased benefits relied upon by appellee and the district court did not originate with the Joint Committee. The other 1% of the new deficit was attributable to providing full supplemental and spousal annuities under 45 U.S.C. 231a(b)(1) and 231a(c)(1) for employees retiring at age 60 with 30 years' experience. 120 Cong. Rec. 18392-18393

constitutionality of the provisions Congress enacted. Congress must be presumed to have brought its own considered judgment to bear on the merits of the legislation. *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 130 (1810).[29]

There is likewise no merit to the district court's and appellee's belief (J.S. App. 15a-19a; Motion to Affirm 11-17) that the Joint Labor-Management Railroad Retirement Negotiating Committee was not forthcoming in explaining the operation of its "windfall" benefits recommendation—again, even assuming that this factor has any relevance to the constitutionality of Section 231b(h). Representatives of the Joint Committee fully and accurately described the "windfall" benefit provisions and the special limitations on receipt of such benefits by those who left the industry before 1974. See, *e.g.*, 120 Cong. Rec. 18392 (1974);

(1974). The unavailability of these benefits had operated as a "significant deterrent" to the early retirement Congress had sought to encourage in 1973 by providing basic retirement benefits to persons who reached age 60 and had 30 years' experience (Pub. L. No. 93-69, Section 101, 87 Stat. 162). See 120 Cong. Rec. 18392-18393 (1974); H.R. Rep. No. 93-1345, *supra*, at 17; S. Rep. No. 93-1163, *supra*, at 17. One of the principal purposes of the Railroad Retirement Act from its inception has been to encourage older workers to retire, *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 573-574, and it was reasonable for the Joint Committee to recommend changes to accomplish this end.

[29] The present case is therefore legally indistinguishable from a case in which labor and management undertake a unified lobbying effort to affect the content of a bill drafted by a congressional committee.

1974 House Hearings 167-168, 221; *1974 Senate Hearings* 300-302, 342-344.[30]

Finally, no constitutional significance may be attached to the fact that representatives of appellee's class were not specifically notified of the changes recommended by the Joint Committee, were not notified by the Railroad Retirement Board prior to passage of the 1974 Act that their benefits might be reduced, and were not called to testify before the responsible congressional committees (J.S. App. 13a, 15a).[31] An Act of Congress is not rendered unconsti-

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[30] The colloquy between Representative Dingell and William Dempsey (the Chairman of the National Railroad Labor Conference and a member of the Joint Committee) cited by the district court (J.S. App. 15a-16a, quoting *1974 House Hearings* 199, 201) did not even relate to dual or "windfall" benefits. The discussion instead concerned the formula to be used in calculating the "staff component" of an annuity. Chairman Dempsey's exchange with Senator Hathaway, also relied upon by the district court (J.S. App. 17a, quoting *1974 Senate Hearings* 333-334), concerned the Senator's suggestion that the vesting requirement for purposes of receiving dual benefits be increased beyond 10 years of service, not whether persons in appellee's position should receive benefits. The remaining statement by Chairman Dempsey, relied upon by the district court and appellee (J.S. App. 16a; Motion to Affirm 15, quoting *1974 House Hearings* 213-214), is a general comment that persons "vested" under both systems as of January 1, 1975, "had a right to rely upon the law as it existed when they were working." Chairman Dempsey did not purport to be giving a complete explanation of the detailed "windfall" benefit provisions in the bill. The discussion was centered instead on whether general revenues should be used to fund "windfall" benefits.

[31] Equally irrelevant, of course, are general statements in press releases issued by the Joint Committee at the time of

tutional merely because Congress has declined to notify or solicit the views of individuals who may be affected by it. Moreover, the 1974 Act was not an unexpected legislative development. To the contrary, it was the result of four years of public debate. Members of appellee's class presumably had the opportunity during this period to exercise the right of the people generally to petition Congress and present their views on the merits of the pending proposals.

In conclusion, however, it is appropriate to note that if the district court and appellee are correct in their assertion that the distinctions drawn in Section 231b(h) are merely the result of legislative oversight or inadequate explanation, appellee and the class he represents can secure complete relief by requesting Congress to remedy the unintentional discrimination. Cf. *Vance* v. *Bradley*, *supra*, 440 U.S. at 97 & n.12; *Delaware Tribal Business Committee* v. *Weeks*, *supra*, 430 U.S. at 90. It is in that forum, and not the courts, that any relief is appropriate.[32]

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its April 10, 1974 letter to Senator Williams and by the Railroad Retirement Board after the 1974 Act was passed (Motion to Affirm 14-15). The former, moreover, accurately stated that the Joint Committee agreed "in general" with the recommendations of the Commission on Railroad Retirement with respect to dual benefits.

[32] As appellee points out (Motion to Affirm 16), Senator Domenici introduced a bill in 1977 (S. 467, 95th Cong., 1st Sess.) that would have granted "windfall" benefits to appellee's class (see 123 Cong. Rec. 2230-2231 (1977)). Identical bills were introduced in the House. See H.R. 2720, 95th Cong., 1st Sess. (1977); H.R. 6015, 95th Cong., 1st Sess. (1977); H.R. 12256, 95th Cong., 2d Sess. (1978); H.R. 1690, 96th

3. *The Alternative Means Available To Congress To Resolve The Financial Problems Of The Railroad Retirement System*

The district court concluded (J.S. App. 29a) that the savings accruing to the Railroad Retirement Account did not justify reducing appellee's benefits because the court believed other methods were available to Congress to correct whatever fiscal problems may have existed in the railroad retirement system. The district court erred, however, in assuming that the exclusion of the members of appellee's class from eligibility for "windfall" benefits can be explained only on the ground that Congress sought to save money as a result. Congress evidently shared the view of the Joint Labor-Management Railroad Retirement Negotiating Committee that individuals who left the industry permanently have a diminished equitable claim to such benefits, and Congress could legitimately have decided to reduce appellee's benefits on that ground alone, without regard to the savings produced.

But even taking cost considerations into account, it is no constitutional objection to the statutory scheme that Congress may have had other means available to it to relieve the Railroad Retirement Account of the burden resulting from "windfall"

Cong., 1st Sess. (1979). But none of these bills has ever been reported out of committee, even after the fact that appellee's class would not receive "windfall" benefits became rather well publicized. See, *e.g.*, *Railroad Retirement Act Amendments, 1976: Hearing on S. 3662 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 94th Cong., 2d Sess. 48-50 (1976).

benefits. As explained above, the decision to save an estimated $2.38 billion over the next 20 years by eliminating "windfall" benefits for individuals who Congress believed to have a reduced equitable claim to them was within the range of permissible options. The choice of which way to proceed in allocating social welfare benefits is a legislative, not a judicial judgment, and the Court has accorded the legislative branch wide latitude "in choosing among competing demands for limited public funds." *Maher* v. *Roe*, 432 U.S. 464, 479 (1977).[33]

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[33] If the Court were to accept appellee's argument that 45 U.S.C. 231b(h) unconstitutionally distinguishes in the allocation of "windfall" benefits based on affiliation with the railroad industry, the relief ordered by the district court—expanding the coverage of 45 U.S.C. 231b(h)(1) to include members of appellee's class—would nevertheless be in error.

> "Where a statute is defective because of underinclusiveness," Mr. Justice Harlan noted, "there exist two remedial alternatives: a court may either declare [the statute] a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion."

Califano v. *Westcott*, 443 U.S. 76, 89 (1979), quoting *Welsh* v. *United States*, 398 U.S. 333, 361 (1970) (concurring opinion).

The relief ordered by the district court in this case is inconsistent with the considered decision in 1974 by both the Joint Labor-Management Railroad Retirement Negotiating Committee and Congress to reject the recommendation of the Commission on Railroad Retirement that individuals in appellee's position be covered (see pages 12-13, *supra*). It would also have the effect of creating an enormous drain on the Railroad Retirement Account (or on general revenues reim-

bursing the Account) in contravention of the congressional purpose to restore the Account to financial soundness.

In our view, if the Court were to accept appellee's constitutional argument, the appropriate course here would be to strike the "windfall" benefit provisions in 45 U.S.C. 231b(h), except those in subsections (h)(1)(A)(iii) and (h)(3)(A)(iii), which authorize such benefits for individuals who had 25 years of railroad service by the end of 1974. Appellee concedes that it is not unconstitutional to provide windfall benefits to these individuals and not to the members of his class, because the 25-year employees may properly be regarded as career railroaders (see pages 33-34, *supra*). The provision of dual benefits under Section 204(a)(3) for persons who were retired and eligible to receive them by the end of 1974 (which appellee has likewise not challenged) would also be unaffected by this approach. The result would be to continue the payment of "windfall" benefits to the individuals who have the strongest equitable claim to them, therefore significantly furthering the congressional purpose underlying the grandfather provisions, while at the same time furthering the competing purpose of limiting the drain on the Railroad Retirement Account by reducing rather than expanding benefits.

The approach we suggest would not entail a judicial rewriting of the statute through the introduction of new eligibility criteria not expressly approved by Congress. Compare *Califano* v. *Westcott, supra,* 443 U.S. at 92-93; see also *id.* at 95 n.1 (Powell, J., dissenting). The eligibility for "windfall" benefits of persons already retired or with 25 years of service by the end of 1974 is expressly provided in the Act.

Moreover, the "windfall" benefits involved here are not ones Congress deemed essential in order to furnish a minimal standard of living for the beneficiary and his family (compare *Califano* v. *Westcott, supra,* 443 U.S. at 90, 92), as demonstrated by Congress' decision to eliminate dual benefits in the future. Thus, the equities do not weigh against enjoining the payment of benefits to persons Congress deemed eligible, as they did in *Westcott.* The relief we propose here, in the event the Court should hold that the exclusion of appellee from eligibility under 45 U.S.C. 231b(h) is unconstitutional, would preserve the limited resources in the Railroad Retirement Ac-

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APRIL 1980

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count until Congress has an opportunity to reassess the relative equities of potential beneficiaries against the background of the financial requirements of the railroad retirement system. *Califano* v. *Westcott, supra,* 443 U.S. at 96 (Powell, J., dissenting).

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